

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking Regarding the)
Implementation of the Suspension of Direct) R.02-01-011
Access Pursuant to Assembly Bill 1x and)
Decision 01-09-060)
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**COMMENTS OF HERCULES MUNICIPAL UTILITY
ON THE PROPOSED DECISION OF
ADMINISTRATIVE LAW JUDGE PULSIFER
ON PROPOSED
COST RESPONSIBILITY SURCHARGE EXEMPTION PROTOCOLS**

ELLISON, SCHNEIDER & HARRIS, L.L.P.
Greggory L. Wheatland
2015 H Street
Sacramento, CA 95814
(916) 447-2166 – Telephone

Attorneys for Hercules Municipal Utility

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In accordance with Rule 14.3 of the California Public Utilities Commission Rules of Practice and Procedure, Hercules Municipal Utility (“Hercules”) submits the following comments on the Proposed Decision of ALJ Thomas Pulsifer Granting Petition of Pacific Gas and Electric Company (“PG&E”), San Diego Gas and Electric Company (“SDG&E”), and Southern California Edison Company (“SCE”) for Modification of Decision 06-07-030 (“Proposed Decision”).

Hercules supports the Comments of the California Municipal Utilities Association (“CMUA”) on the Proposed Decision. Hercules also will address that portion of the Proposed Decision that declines to grant New Parties the option to elect or reject the DWR power charge exemption.

I. A “New Party” Should Be Permitted To Elect Whether Or Not To Receive The DWR Exemption.

The Proposed Decision declines to allow a “new party”¹ to exercise a choice regarding the exemption on the grounds that when “a customer vacates premises and a successor customer moves into those same premises, the successor customer typically becomes subject to the same terms, conditions, and rates prescribed by the tariff that applied to the former customer.”²

The above statement, however, is simply untrue. Under IOU tariffs, whenever a customer vacates a service location, the successor customer does not involuntarily become subject to the same terms, conditions and rates that applied to the former customer. Under all IOU tariffs, when a successor customer occupies the premises, the successor customer is free to choose among all applicable tariffs and is not bound by the particular rate schedule selected by the prior occupant. Each new customer has the right to elect among all applicable rate schedules, depending upon that individual customer’s particular load, hours of operation, type of business, type of service or economic preferences.³ Using PG&E as an example, if the prior customer was on Schedule E-1, the new customer can elect Schedule E-6 or E-9, if the customer believes one of those schedules to be more favorable. Moreover, if PG&E places a new customer on Schedule E-1, that customer can immediately request to be on Schedule E-6.⁴

The Proposed Decision also reasons that “The terms of IOU tariffs are applied on a nondiscriminatory basis, and are not applied selectively depending on whether a given customer has moved in recently or has been occupying the premises for a longer period.”⁵ While it is true that the terms of the IOU tariff are applied on a nondiscriminatory basis, it is not true that the

¹ A “new party” is defined by Resolution E-3999 as “either 1) an entity which occupies, and will begin to consume electricity at, transferred MDL premises or 2) an entity who assumes liability for the charges at transferred MDL premises.” Res. E-3999, p. 32

² Proposed Decision, pp. 6-7.

³ See e.g. PG&E Rule 12.c

⁴ *Id.*

⁵ Proposed Decision, p. 7.

terms are “not applied selectively” when a new customer moves into new premises. As noted above, the terms of each IOU’s tariffs allow all new IOU customers to elect among optional rate schedules depending on that customers connected load, hours of operation, type of business, type of service or simply the customer’s perception of which applicable rate schedule is most economically advantageous.

The Proposed Decision maintains that there is no valid rationale for the election of an exemption “to be treated differently from other components” of the utility’s tariff.⁶ For that reason, a New Party should be allowed to elect among applicable rate schedule options, just as any new customer who might establish service with the utility for the first time would be allowed to select among applicable rate schedules. Resolution E-3999 held clearly that a “New Party will not be responsible for the prior occupant’s bills.”⁷ If a New Party is not responsible for a prior occupant’s bills, the New Party should not be bound by the prior occupant’s election of an exemption or other billing determinations.

The Proposed Decision also states that “The New Party should be aware of the obligations existing under the existing tariff.”⁸ This statement is incorrect for three reasons.

First, under the Commission’s longstanding policies, customers are not expected to be aware of their obligations under the existing tariff before the utility has informed them of these obligations. The keystone of Commission regulation of IOUs for the past nearly 100 years has been customer choice. The Commission has sought “to ensure that consumers can exercise informed choices among increasingly complex and competitive utility services.”⁹ Customers are not just permitted to change rate schedules to obtain the most economical rate, they are

⁶ Id.

⁷ Resolution E-3999, p. 21

⁸ Proposed Decision, p. 7

⁹ Decision No. 01-07-026, Rulemaking No. 98-07-038 (Filed July 23, 1998).

encouraged to do so, and the IOUs have an obligation to provide the customers on a timely basis with the information that will facilitate informed choices. For example, in a complaint case involving a PG&E customer rate dispute, the Commission clarified that: “[w]hen rate changes occur that potentially make a particular rate schedule more economical for a group of customers than the schedules for their existing service, the utility is responsible for taking reasonable steps to get word out to the affected customer on a timely basis. The customer cannot reasonably be expected to follow the effect of each rate change; rate schedule A-1, for example, has changed eight times since 1987, while rate schedule A-10 has changed 11 times.”¹⁰

Second, a New Party is not even a customer of the IOU. The New Party is occupying premises not served by the IOU. In most cases, the New Party will have had no prior relationship of any kind with the IOU. Therefore, a New Party is even less likely than an IOU customer to be aware of obligations under the IOU’s tariff. There is no evidence anywhere in the record of this proceeding and certainly not in the Petition to Modify that a New Party could possibly be aware of obligations under the IOU’s tariff.

Third, while the IOUs’ departing MDL tariffs require the utility to inform departing customers of their CRS obligations and to periodically remind departing customers of these obligations, the utilities are not similarly obligated to inform New Parties of these obligations. In Hercules’ Protest to PG&E AL 2433-E-C, Hercules pointed out that PG&E’s proposed tariffs failed to explain how PG&E will notify the New Party of the alleged obligation.¹¹ Unfortunately, Resolution E-3999 approved the tariff without resolving this issue.

¹⁰ Shimek v. PG&E, D. 93-10-011, (C.93-01-038)

¹¹ Resolution E-3999, p. 32

II. Conclusion

In conclusion, the Proposed Decision should be revised to allow New Parties the option to initiate or change their status regarding the DWR power charge exemption under the same terms and conditions that new IOU customers may elect to initiate or change their applicable rate schedule.

Dated: April 23, 2007

Respectfully submitted,

By: _____/s/_____

Gregg Wheatland
ELLISON, SCHNEIDER & HARRIS, L.L.P.
2015 H Street
Sacramento, CA 95814

Attorneys for Hercules Municipal Utility

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the *Comments Of Hercules Municipal Utility On The Proposed Decision Of Administrative Law Judge Pulsifer On Proposed Cost Responsibility Surcharge Exemption Protocols* on all known parties to R.02-01-011 by transmitting an e-mail message with the document attached to each party named in the official service list.

Executed on April 23, 2007 at Sacramento, California.

/s/

Karen Mitchell

Service List
R.02-01-011
April 23, 2007

butzjh@apci.com
kmccrea@sablax.com
wmogel@saul.com
khojasteh.davoodi@navy.mil
jeff.e.gray@lowes.com
jimross@r-c-s-inc.com
mbrubaker@consultbai.com
Andrew.dalton@valero.com
srusch@plainsxp.com
dhuard@manatt.com
rkeen@manatt.com
cwilliamson@breitburn.com
npedersen@hanmor.com
jbloom@winston.com
ewheless@lacs.d.org
SFarkas@ppcla.com
klatt@energyattorney.com
douglass@energyattorney.com
janet.combs@sce.com
michael.backstrom@sce.com
lviejo@astrumutilities.com
pszymanski@sempra.com
tcorr@sempraglobal.com
wkeilani@semprautilities.com
jleslie@luce.com
llund@commerceenergy.com
george.hanson@ci.corona.ca.us
bjl@bry.com
jpmosher@aeraenergy.com
freedman@turn.org
mflorio@turn.org
bfinkelstein@turn.org
jzr@cpuc.ca.gov
norman.furuta@navy.mil
ek@a-klaw.com
nes@a-klaw.com
sdhilton@stoel.com
jrosenbaum@whitecase.com
ahk4@pge.com
clpearce@duanemorris.com
mhindus@pillsburywinthrop.com
pxo2@pge.com
epoole@adplaw.com
bcragg@goodinmacbride.com
hgolub@nixonpeabody.com
jsqueri@goodinmacbride.com

jarmstrong@gmssr.com
lcottle@winston.com
mday@gmssr.com
jguzman@nossaman.com
mmattes@nossaman.com
jguzman@nossaman.com
edwardoneill@dwt.com
bobgex@dwt.com
stevegreenwald@dwt.com
irene@igc.org
rmrlk@intertie.com
ssmyers@att.net
mrh2@pge.com
pvh1@pge.com
dbyers@landuselaw.com.
raj.pankhania@ci.hercules.ca.us
andy.vanhorn@vhcenergy.com
cconklin@ussposco.com
ds1957@camail.sbc.com
kowalewskia@calpine.com
phansch@mofo.com
wbooth@booth-law.com
mgomez1@bart.gov
maric.munn@ucop.edu
rschmidt@bartlewell.com
tomb@crossborderenergy.com
jbradley@svlg.net
bmcc@mccarthy.com
sberlin@mccarthy.com
jkaspar@stockport.com
chrism@mid.org
jkoontz@calwaterlaw.com
brbarkovich@earthlink.net
bill@jbsenergy.com
josephs@pplant.ucdavis.edu
cmkehrrein@ems-ca.com
stuart@robertson-bryan.com
kidow@saccounty.net
abb@eslawfirm.com
billjulian@sbcglobal.net
blaising@braunlegal.com
dcarroll@downeybrand.com
glw@eslawfirm.com
mdaponde@pillsburywinthrop.com
blaising@braunlegal.com
lmh@eslawfirm.com

lmh@eslawfirm.com
kmills@cbbf.com
rliebert@cbbf.com
atrowbridge@daycartermurphy.com
jbaker@daycartermurphy.com
mpa@a-klaw.com
roger.curtis@FDS.com
energyhig@aol.com
rdennis@knowledgeinenergy.com
filings@hotmail.com
kjsimonsen@ems-ca.com
andrew.cheung@lausd.net
cread@omm.com
gmeyer@pmcos.com
ej_wright@oxy.com
bdelamer@capstoneturbine.com
case.admin@sce.com
Jennifer.Shigekawa@sce.com
mike.montoya@sce.com
ehull@ci.chula-vista.ca.us
vthompson@sempra.com
liddell@energyattorney.com
mshames@ucan.org
centralfiles@semprautilities.com
gdixon@semprautilities.com
kmorton@sempra.com
apeters@semprautilities.com
kjk@kjkammerer.com
jwmueller@attglobal.net
heiertz@irwd.com
tmorgan@electric.com
jskillman@prodigy.net
rhoftman@anaheim.net
hal@rwitz.net
sara@oakcreekenergy.com
mdjoseph@adamsbroadwell.com
joe.como@sfgov.org
wblattner@sempra.com
scasey@sfgwater.org
mpatel@sidley.com
rredlinger@chevrontexaco.com
crcq@pge.com
jmckinney@thelenreid.com
Cem@newsdata.com
angela.kim@fticonsulting.com
rocky.ho@fticonsulting.com
megmeal@aol.com
lisaweinzimer@sbcglobal.net
jim@prudens.com
cpuccases@pge.com

yxg4@pge.com
rfg2@pge.com
rochmanm@spurr.org
gerspamer@mofo.com
pthompson@summitblue.com
jpoole@realenergy.com
editorial@californiaenergycircuit.net
JerryL@abag.ca.gov
mrw@mrwassoc.com
cwootencohen@earthlink.net
chris@emeter.com
rita@ritanortonconsulting.com
mary.tucker@sanjoseca.gov
joyw@mid.org
rmccann@umich.edu
cpucrulings@navigantconsulting.com
jdalessi@navigantconsulting.com
tcrooks@navigantconsulting.com
scott.tomashefsky@ncpa.com
lwhouse@innercite.com
dgeis@dolphingroup.org
kdw@woodruff-expert-services.com
lawrence.lingbloom@sen.ca.gov
rroth@smud.org
karen@klindh.com
lpeters@pacifier.com
rfp@eesconsulting.com
running@eesconsulting.com
ayk@cpuc.ca.gov
agc@cpuc.ca.gov
los@cpuc.ca.gov
ctd@cpuc.ca.gov
cjb@cpuc.ca.gov
dmg@cpuc.ca.gov
bsl@cpuc.ca.gov
dlf@cpuc.ca.gov
yee@cpuc.ca.gov
jab@cpuc.ca.gov
jms@cpuc.ca.gov
jf2@cpuc.ca.gov
kms@cpuc.ca.gov
kdw@cpuc.ca.gov
kpc@cpuc.ca.gov
llk@cpuc.ca.gov
lmi@cpuc.ca.gov
mxh@cpuc.ca.gov
mts@cpuc.ca.gov
omv@cpuc.ca.gov
psd@cpuc.ca.gov
paj@cpuc.ca.gov

pgh@cpuc.ca.gov
gig@cpuc.ca.gov
scr@cpuc.ca.gov
trp@cpuc.ca.gov
JMcMahon@navigantconsulting.com
aulmer@water.ca.gov
kgriffin@energy.state.ca.us

ldecarlo@energy.state.ca.us
mjaske@energy.state.ca.us
ttutt@energy.state.ca.us
ntronaas@energy.state.ca.us
jgeorge@water.ca.gov
jpacheco@water.ca.gov

DAVE DIETRICH
DAVIS ENERGY GROUP
123 C STREET
DAVIS, CA 95616

PETE GARRIS
CALIFORNIA DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVENUE, SUITE 100
SACRAMENTO, CA 95821